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May 1, 2002  
OFFICE OF THE  
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OFFICE OF THE  
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## VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: *In the Matter of Rulemaking Amendment of Regulations for Telephone  
Service Providers*  
Docket No. 00-00873

Dear Mr. Waddell:

BellSouth Telecommunications, Inc. ("BellSouth") writes to request clarification regarding the notation on the Final Conference Agenda for May 7, 2002, under Miscellaneous Business, regarding the above-referenced docket. The Agenda reflects that "the Directors will hear oral comments on the proposed rules by interested parties." As discussed below, BellSouth is perplexed by this description of the proceeding on this docket in light of the current status of this matter.

As the Authority is aware, during the progress of this docket, the TRA Staff has advanced various proposals for amendments to the Service Standards Rules. Industry members and other interested parties have participated in three workshops and have filed lengthy written comments on each proposal advanced by the Staff, since September 2000, when the docket was initiated. In August of last year, the Staff circulated its most recent written draft of proposed rules. This August 16<sup>th</sup> draft was the subject of comments filed by BellSouth and others in October. BellSouth's October filing highlighted numerous concerns and objections to the August draft, many of which related to matters which BellSouth believed had already been resolved prior to the August draft, through workshops.

Since October, BellSouth and other industry members have continued to work to find areas of compromise in an attempt to reach a reasonable negotiated resolution to the amendments proposed by the Staff. BellSouth has appreciated

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the hard work and effort put forth by Mr. Roberson in this regard. BellSouth believed that this ongoing negotiation had been fruitful and was characterized by compromise on both sides; we were pleased that these efforts appeared to produce substantial progress beyond the positions of the parties as reflected in the August draft by the Staff when compared with the October comments filed by industry members. In short, since October, the parties and the Staff have come a long way toward reaching a reasonable negotiated resolution on proposed rules. BellSouth anticipated that the next step toward reaching appropriate amendments would be the presentation by the Staff of a revised draft reflecting the substantial progress accomplished by our continued discussions and negotiation. To date, we have not seen nor do we even know whether such a revised draft exists. Accordingly, BellSouth respectfully requests that the Authority: (1) notify BellSouth as to whether such a revised draft has been generated and, (2) if such a revised draft has been proposed, provide BellSouth with a copy of that draft prior to taking further comment.

If the Authority intends to hear "oral comments on the proposed rules," meaning the rules as proposed by the Staff in August, then BellSouth respectfully submits that the industry has provided a substantial amount of comments in written form to that draft, that the Staff of the Authority has expended a significant amount of administrative resources reviewing and continuing to negotiate based on those comments, and that to disregard all of that substantial effort and return to the August draft, would result in an overwhelming waste of administrative resources and place the parties and the Authority squarely back at ground zero with respect to the proposed rules. Obviously this would result in a foolish waste of time and effort by all concerned.<sup>1</sup> BellSouth believes an oral comment session is inappropriate until such time as a draft reflecting the current state of the negotiations has been presented to all parties in order that the parties can be aware of the substance being considered.

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<sup>1</sup> BellSouth entered into this activity with the understanding that Mr. Roberson was authorized to negotiate these matters on behalf of the Authority. Mr. Roberson is the natural representative of the Staff on these issues and they come under his position with the Authority. In reliance on the expectation that these negotiations were undertaken by an authorized representative of the Authority, BellSouth has invested a substantial amount of effort on this matter.

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BellSouth strongly believes that the most appropriate process to advance the work in this docket would be to compile a written draft reflecting the compromises and progress achieved by the negotiation that has proceeded since October. If no such draft has yet been prepared, then BellSouth is prepared to assist in the creation of such a draft in order to facilitate this process. If, however, the Authority intends to hold a hearing for the purpose of receiving oral comments on the August 16 draft rather than working from the current status reflecting the negotiated compromises, then BellSouth respectfully submits that such a process will be extremely time consuming and wasteful, given the points of compromise reached in the negotiations of the parties. The comments prepared and filed in response to the August 16 draft are voluminous and, if we are to start again from the August 16 draft without regard for any of the negotiation and compromise reached after October, then BellSouth anticipates that the oral comments session will require a reiteration orally of those written comments as well as oral recitation regarding each party's perception of the compromises and changes agreed upon as a result of negotiation since October.

In the event the Authority seeks oral comments on the August draft, then BellSouth (and other parties) also maintains, as it has expressed in correspondence since October, that any proceeding to consider a proposal to amend the rules in the fashion described in the August draft, must include the opportunity for parties to examine and test the evidence on which the proposed rules being considered are based. The Tennessee Court of Appeals has recognized the importance of public comment and participation in the administrative rulemaking procedure, including the right of the affected public to test the underlying factual support for such rules. See *U.S. Life Title Insurance Company vs. Department of Commerce and Insurance*, 770 S.W.2d 537 (Tenn. App. 1988). In the *U.S. Life* case, the Tennessee Court of Appeals noted that the agency, through its notice of rulemaking, is provided with "an opportunity to educate itself concerning the impact the proposed rule will have on the affected parties." *Id.* The Court did not stop with the concept that rulemaking was solely for the edification of the agency. The Court went on specifically to note that "adequate notice resolves many of the concerns over the fairness of administrative rulemaking. It gives interested parties the opportunity to confront the agency's factual suppositions and policy preconceptions . . . it also forces agencies 'to justify their quasi-legislative rulemaking before an informed and skeptical public.'" *Id.* at 539-40 (citing 1 C. Koch, *Administrative Law & Practice*, § 4.4 (1985) and *State v. Department of*

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*Health and Human Services, 670 F.2d 1262, 1281 (3d Cir. 1981) (internal citations deleted and emphasis added))*. Clearly this authority supports BellSouth's position that, unless the rules are established through a fully negotiated process, then BellSouth has the right to test the evidence allegedly supporting the rule the agency is considering.

In conclusion, we feel that such measures are unnecessary if negotiations since October 2001 are recognized, memorialized and allowed to serve as the starting point for further comments. We believe this would certainly be the most prudent and economically efficient way to proceed. The Authority should recognize the good faith negotiations of the parties regarding these rules and the progress and accomplishments achieved through those negotiations. This progress should be memorialized in a draft and shared with the parties who have invested such a significant effort in working on this matter.

Cordially,

A handwritten signature in dark ink, appearing to read "Joelle Phillips", written in a cursive style.

Joelle Phillips

JP/jej

### CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

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A handwritten signature in dark ink, appearing to read "Dale Grimes", written over a horizontal line.